

BUTTES RESOURCES CO.

IBLA 82-869

Decided April 4, 1983

Appeal from the decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 24283.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil
and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment from Dallas, Texas, to Billings, Montana, 2 days before it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement

For late payment of an oil and gas lease rental to be justifiable, factors beyond the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Delay in payment resulting from improperly addressing an envelope does not justify late payment within the meaning of 30 U.S.C. § 188(c) (1976).

APPEARANCES: Michael A. Rutherford, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Buttes Resources Company has appealed the May 3, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease M 24283 which was held to have terminated by operation of law on April 1, 1982, the date on which the lessee's rental payment was due but was not received. Appellant's payment was mailed on March 30, 1982, but was not received by BLM until April 2, 1982.

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-(a). This termination occurs by operation of law, not by the action of the Department. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. 43 CFR 1821.2-2(d), (f); Ruth Eloise Brown, 60 IBLA 328 (1981). Because appellant's rental was not received on the April 1, 1982, due date, the lease terminated automatically. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976), only if, among other requirements, the lessee shows that failure to pay on time was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment from Dallas, Texas, to Billings, Montana, 2 days before it is due does not constitute reasonable diligence. See Jeannette L. Fenwick, 52 IBLA 250 (1981); Rose M. Keegel, 49 IBLA 106 (1980); Bob W. Scott, 46 IBLA 254 (1980); Harry Zaslow, 46 IBLA 217 (1980).

[3] A terminated lease may still be reinstated if a lessee can demonstrate that his failure to pay timely the lease rental was justifiable. For late payment of an oil and gas lease rental to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee

from meeting the objective reasonable diligence test. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); see also Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981). In support of its appeal appellant offers the following reasons:

We originally placed payment of those rentals as incurred by the provisions of the referenced lease in the mail to be delivered from the date of February 26, 1982, allowing ample time of receipt prior to the rental date of April 1, 1982 as evidenced by the enclosed postmarked copy. However, as you will note by the additional enclosed copies, the letter was forwarded to the wrong address and returned to sender. We immediately attempted to correct this error by issuing another rental check which was postmarked prior to the rental date but received a date later than such rental date of April 1, 1982.

A copy of the envelope said to contain the misdirected payment indicates that it was postmarked in Dallas on March 16. ^{1/} The envelope was improperly addressed in that it did not provide the correct post office box number for the Montana State Office. The envelope is stamped "Return to Sender -- Addressee Unknown." It also bears a stamp "Received Mar 22 1982 land department." This apparently refers to when the letter was returned to appellant. It appears that even though appellant's land office received the returned letter on March 22, no check was mailed to BLM until March 30. Appellant has not demonstrated that payment was delayed by factors outside of its control. Delay in payment resulting from improperly addressing an envelope does not justify late payment within the meaning of 30 U.S.C. § 188(c) (1976). See Phillips Petroleum Co., 71 IBLA 105 (1983); Gretchen Capital, Ltd., 37 IBLA 392 (1978). Furthermore, the envelope indicates that appellant had received it in time to mail payment timely to BLM. The fact that appellant waited more than 1 week after the return of the improperly addressed payment indicates that this is not a circumstance beyond appellant's control that would justify reinstatement under 30 U.S.C. § 188(c) (1976).

We note, however, that Congress has enacted another statutory provision to allow reinstatement of oil and gas leases which are not subject to reinstatement under 30 U.S.C. § 188(c) (1976). Section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447 (Jan. 12, 1983), amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. This provision eases the requirements necessary to win reinstatement of a lease; however, reinstated leases would be subject to new rental and royalty requirements as well as other new provisions. Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before the enactment of this new statute, appellant should inquire promptly at the Montana State Office, BLM, if it wishes to avail itself of this provision.

^{1/} The certified mail number for this envelope is 438639. The article mailed on Feb. 26, 1982, was numbered 438615.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness

Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge.

